



INTERIOR BOARD OF INDIAN APPEALS

Estate of Richard Burke (Thompson)

9 IBIA 75 (09/25/1981)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF RICHARD BURKE : Order Denying Extension of
(THOMPSON) : Time And Dismissing Appeal
Deceased Umatilla Allottee 143-A594 :
: Docket No. IBIA 81-34
:
: September 25, 1981

This appeal was taken by Richard Burke, Jr., from an order denying petition for rehearing entered by Administrative Law Judge Robert C. Snashall on April 16, 1981. Judge Snashall's March 24, 1981, order determining heirs had found that Richard Burke (Thompson), Umatilla Allottee 143-A594, died intestate on January 17, 1980. The estate passed in equal shares to decedent's four children. Appellant's sole ground for seeking reconsideration of this order was his assertion that decedent had intended to leave his entire estate to appellant, but was prevented from executing a will by adverse weather conditions.

On July 16, 1981, counsel for appellant was granted a 30-day extension of time for filing a brief. On August 12, 1981, the Board granted a second 30-day extension after appellant's counsel withdrew from the case, in order for appellant to obtain another attorney or to file a brief pro se. Appellant, through the Agency Superintendent, requested the Board on September 25, 1981, to grant an additional 90-day extension because he was having difficulty finding another attorney.

The Board has determined to deny this request. We have reviewed the file and find that, even assuming appellant's statements are totally correct and honest, his appeal is without merit. Under 25 U.S.C. sec. 373 (1976), Indians have the right to dispose of trust property by will. Regulations implementing this section are found in 43 CFR 4.260-4.262. When an Indian dies without making a will, 25 U.S.C. secs. 348 and 372 (1976) require that the Secretary of the Interior determine that Indian's heirs at law according to State laws of intestate succession. In the absence of a properly executed will by a deceased Indian, the Secretary cannot distribute his property according to how the deceased may have intended to provide by will.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order denying petition for rehearing is affirmed.

This decision is final for the Department.

//original signed
Wm. Philip Horton
Chief Administrative Judge

We concur:

//original signed
Franklin D. Arness
Administrative Judge

//original signed
Jerry Muskrat
Administrative Judge